



## NEGLIGENCE LAW SECTION

October 27, 2010

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Re: ADM File No. 2002-24  
Proposed Amendment of Rule 7.3 of the Michigan Rules  
of Professional Conduct (MRPC)

Dear Supreme Court Clerk:

The Negligence Law Section Council of the State Bar of Michigan urges the Supreme Court to reject the proposed amendment to Rule 7.3 of the MRPC and consider the adoption of Rule 7.3 of the American Bar Association Model Rules of Professional Conduct covering direct contact with prospective clients.

The current MRPC recognizes that there is a potential for abuse inherent in direct contact by a lawyer with a prospective client known to need legal services. For this reason, the current MRPC Rule 7.3 specifically, and narrowly, addressees this form of communication. The proposed amendment of Rule 7.3 is problematic for a number of reasons, most notably the fact that it goes *far beyond* a limited application to direct contact. Indeed, the proposed amendment of Rule 7.3 would apply to "*every written, recorded, or electronic communication* from a lawyer that seeks professional employment from a prospective client..." Thus, the proposed amendment of Rule 7.3 would apply to *all forms of marketing* by all attorneys including, but not limited to, *all* brochures, websites, television, radio, and print advertisements.

In contrast to direct communication with a client, the MRPC comment does not recognize these forms of communication as "fraught with the possibility of undue influence, intimidation, and overreaching" that direct communication may involve. The MRPC comment to the current Rule 7.3 correctly states that an attorney's website or television advertisement, for example, is "out in public view", thus subject to scrutiny by those who know the lawyer.

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The content of advertisements and communications permitted under Rule 7.2 are permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer.

This potential for informal review is itself likely to help guard against statements and claims that might constitute false or misleading communications, in violation of Rule 7.1.”

Additionally, an identification label of “Advertising Material” on many forms of advertising is unnecessary. The public recognizes that a radio or print advertisement, for example, represents an attempt to sell a product or service. To be sure, an advertisement for legal services is no exception to this common understanding.

Unlike the proposed amendment to Rule 7.3 of the MRPC, Rule 7.3 of the American Bar Association Model Rules of Professional Conduct solely addresses direct contact with prospective clients. An additional benefit of Rule 7.3 of the ABA Model Rules of Professional Conduct is the fact that it does not include the problematic inclusion, and resulting task of interpretation/enforcement, of the term “prominently featured” which is included in the proposed amendment. Rule 7.3 of the ABA Model Rules of Professional Conduct states:

“(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words “Advertising Material” on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specific in paragraphs (a)(1) or (a)(2).”

The comment to Rule 7.3 of the ABA Model Rules of Professional Conduct clearly indicates that the rule applies only to direct contact with prospective clients.

For the reasons outlined above, the Negligence Law Section Council strongly opposes the proposed amendment to Rule 7.3 of the MRPC. In the alternative, the Negligence Law Section recommends that the Supreme Court consider the adoption of Rule 7.3 of the American Bar Association Model Rules of Professional Conduct covering direct contact with prospective clients.

Sincerely,

A handwritten signature in cursive script, appearing to read "David E. Christensen".

David E. Christensen  
Chairperson

NEGLIGENCE LAW SECTION

Respectfully submits the following position on:

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ADM File No. 2002-24

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The Negligence Law Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Negligence Law Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Negligence Law Section is 2,112.

The position was adopted after discussion and a vote at a scheduled meeting. The number of members in the decision-making body is 14. The number who voted in favor to this position was 14. The number who voted opposed to this position was 0.